IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 685 OF 2000

SHRI DNYANESHWAR @ DEEPAK)
VITHAL KHULPE, residing at)
Navparivar Housing Society,)
Chinchwadgaon, PUNE - 33).. APPELLANT
(Org. Accused)

Versus

STATE OF MAHARASHTRA)
(At the instance of Wai Police)
Station)) .. RESPONDENT

Mr. M. K. Kocharekar for appellant

Mr. S.R. Borulkar, PP with F.R. Shaikh, Addl.PP for State.

CORAM:-SMT. RANJANA DESAI &
D. G. KARNIK, JJ.

DATE ON WHICH THE JUDGMENT RESERVED: 17TH APRIL, 2006

DATE ON WHICH THE JUDGMENT PRONOUNCED: 5TH MAY, 2006

JUDGMENT: (Smt. Ranjana Desai, J.)

. The appellant (for convenience "the accused) was

tried in the sessions court at Satara in Sessions Case No. 860 of 1999 for offences punishable under Section 302 and 201 of the Indian Penal Code ("I.P.C." for short). By his judgment and order dated 4/9/2000, the learned Sessions Judge convicted the accused under Section 302 of the I.P.C. and sentenced him to suffer R.I. for life and to pay a fine of Rs.5,000/-, in default to undergo R.I. for six months. The accused was also convicted of the offence punishable under Section 201 of the I.P.C. and sentenced to undergo R.I. for two years and to pay a fine of Rs.2,000/-, in default to undergo R.I. for two months. The substantive sentences were to run concurrently. Being aggrieved by the said judgment and order, the accused has preferred this appeal.

2. It would be advantageous to give the gist of the prosecution case. Deceased Pushpanjali was the daughter of PW 3 Kondiba Pandurang Dingale. She was married to one Pradeep Kesare on 21/6/84. She had four children from Pradeep Kesare. She had left Pradeep Kesare in 1994. In the year 1997 she was working as a maid with PW 23 Dr. Mangal Motichand Shah.

3. The accused is a practising lawyer. The deceased engaged the accused as her lawyer for filing a divorce case and maintenance application. Illicit relationship developed between the two. At the relevant time they were staying together in a house bearing No. 487 in Sangarali at Wai. The case of the prosecution is that the deceased wanted gold and money and, therefore, there was a quarrel between the deceased and the accused on 21/8/98. The quarrel started because the deceased had demanded a gold ring. Being angered by this on 21/8/98, prior to 18-30 hrs. the accused made the deceased lie on the cot, folded her both hands, kept them on her mouth, gagged her mouth and killed her. Thereafter he kept fire wood on her and poured rockel (kerosene) on her body and set her on fire. After committing this crime the accused left for Pune.

4. The prosecution witnesses saw smoke coming out of the house of the accused. PW 19 Vijay Mahadeo Tribhune, a resident of Sangarali, who saw the smoke coming out from the house of the accused, went upstairs. He saw that a dead body was burning. He then went to the police station and lodged the complaint which is at Exhibit 50. This

complaint is treated as F.I.R. On the basis of this F.I.R. the investigation was started. The accused who was at Pune was contacted by the police. The accused came to Wai on 22/8/98. PW 14 Rekha Mahadeo Ghadage, who is a social worker had come to the scene of offence. The accused made extra judicial confession to her that he had killed the deceased Pushpanjali by keeping her hands folded on her mouth and by gagging her. He further told her that he had collected wooden logs and burnt her. The police arrested the accused on 28/8/98 and after completion of the investigation the accused came to be charged as aforesaid.

5. In support of its case the prosecution examined as many as 26 witnesses. The prosecution examined PW 14 Rekha, a social worker before whom the accused is said to have made the extra judicial confession. The prosecution inter alia examined PW 3 Kondiba Dingale, the father of the deceased, PW 25 Pratibha Dingale, the mother of the deceased, PW 23 Dr. Mangal Shah, the employer of the deceased and PW 24 Pradeep Kesare, the husband of the deceased. PW 7 Dr. Sanjay Gawane deposed about the medical examination of the accused conducted by him. PW 15 Dr. Shinde proved postmortem notes

which are at Exhibit 41. The details of investigation were given by PW 26 Anil Patil, API attached to police station Wai.

6. The accused claimed to be innocent. He examined his mother DW 1 Smt. Rukmini Khulpe, to prove alibi. After perusing the evidence on record the learned Sessions Judge was of the view that the prosecution had proved its case beyond reasonable doubt and hence he convicted the accused as aforesaid.

7. We have heard at some length Mr. Kocharekar, the learned counsel for the appellant-accused and Shri S. R. Borulkar, learned Public Prosecutor. With the assistance of the learned counsel, we have gone through the evidence and the record of the case.

8. Mr. Kocharekar, the learned counsel for the appellant assailed the impugned judgment and order on several counts. He submitted that the impugned judgment is totally unsustainable. He contended that the prosecution has not been able to establish that the accused and the deceased were last seen together. There is no evidence on record to

establish that apart from the accused and the deceased no one else was living in the house of the accused. Therefore, it cannot be said that the accused had killed the deceased. The learned counsel contended that the entire prosecution case rests on extra judicial confession made by the accused to PW 14 Rekha, who is a social worker. He submitted that extra judicial confession is a very weak type of evidence and unless corroborated cannot be relied upon. There is no corroboration to the extra judicial confession allegedly made by the accused. He further contended that Rekha being a social worker the accused would never have made extra judicial confession to her. Admittedly she was not known to the accused. The accused would not have reposed any confidence in her. It does not stand to reason that the accused who is a lawyer would make extra judicial confession to a total stranger and that too to a social worker.

9. Mr. Kocharekar further submitted that PW 14 Rekha has said in her evidence that the police were present at the scene of offence when the accused made extra judicial confession to her. Therefore, extra judicial confession made in the presence of a police officer can never be relied upon. Mr.

Kocharekar contended that the alleged extra judicial confession is not voluntary. Mr. Kocharekar further contended that the witnesses examined by the prosecution to establish that the accused and the deceased were travelling together or were living together can never be believed. It is inconceivable that a rickshaw driver would recollect that about two years back he had seen the accused and the deceased travelling together in his rickshaw. It is equally impossible that a hotel owner would remember that he had seen them together two years back.

10. Mr. Kocharekar contended that the prosecution has also not been able to establish the motive. Circumstantial evidence is not of such quality as would inspire confidence. Several links in the chain of circumstantial evidence have been snapped. The learned counsel contended that suspicion, however strong, cannot take the place of proof. According to him there is hardly any evidence on record to establish complicity of the accused and, therefore, the impugned judgment and order deserves to be set aside.

11. Mr. Borulkar, learned Public Prosecutor on

the other hand submitted that the prosecution has adduced clinching evidence which points directly to the guilt of the accused. He submitted that in the facts of this case the only conclusion which can be drawn is that the accused had killed the deceased. The prosecution has established strong motive. The prosecution has established that the accused was having illicit relationship with the deceased and they were staying together in the flat in which the murder took place. The prosecution has established that the accused had received injuries during the incident in question. The medical evidence clearly indicates that the deceased was first killed by gagging and then burnt. Therefore, the case of suicide is not made out at all.

12. Mr. Borulkar contended that extra judicial confession made to PW 14 Rekha inspires confidence. PW 14 Rekha had no reason to falsely implicate the accused. He submitted that extra judicial confession can safely be relied upon, if the evidence of the person to whom it is made is found to be reliable. In this connection the learned Public Prosecutor relied on **Piara Singh & Ors. v. State of Punjab, AIR 1977 SC 2274**, **State of U.P. v. M. K. Anthony, AIR 1985 SC 48**, **Vinayak**

Shivajirao Pol v. State of Maharashtra, AIR 1998 SC 1096.

13. The learned Public Prosecutor further pointed out that in his statement recorded under Section 313 of the Criminal Procedure Code ("Code" for short) the accused has not given any explanation as to how in suspicious circumstances the deceased was found dead in his house. An adverse inference need to be drawn against the accused. In this connection he relied on **State of T.N. V. P. Muniappan, (1998) 1 SCC 515**. He submitted that the accused has given false answers to all relevant questions asked to him in his statement under Section 313 of the Code. Defence of alibi has proved to be false. That would, therefore, become an additional link in the chain of circumstances. For this proposition he relied on **Mani Kumar Thapa v. State of Sikkim, AIR 2002, SC 2920.** Mr. Borulkar submitted that all proved circumstances point directly to the guilt of the accused and hence no interference is necessary with the impugned judgment and order.

14. Since there is no eye witness, the prosecution has relied upon circumstantial evidence. Broadly

the circumstances are; illicit relationship between the deceased and the accused, the deceased and the accused were last seen together, the house where the dead body was found belongs to the accused, finding of keys of the house with the accused, medical evidence is inconsistent with the theory of suicide, extra judicial confession made by the accused to PW 14 Rekha, nail injuries found on the accused, motive, no explanation offered by the accused about the suspicious death of the deceased in his house and falsity of defence. We will examine whether these circumstances are proved.

15. The prosecution has successfully established that the deceased who was a married lady had left her husband and was having illicit relationship with the accused. PW 24 Pradeep Kesare is the husband of the deceased. He has deposed about the strained relationship between him and the deceased. He has stated that he was married to the deceased on 21/6/1984. They had four children. According to him the deceased had quarrelled with him and his parents and left him. He has categorically stated that he had no sexual relationship with her from 1994.

16. PW 3 Kondiba Dingale has stated that the deceased was married to Pradeep Kesare in 1984. She had four children from him. She had come to his house in the year 1997. She had told him that she wanted to have a career. She again came to him in June 1998. At that time the accused was with her. The deceased and the accused told him that they wanted to file maintenance application in the court.

17. PW 25 is Prabhawati Kondiba Dhengale, the mother of the deceased. She has stated that the deceased had told her that she was not having good relationship with her husband. According to her the deceased had come and stayed with them for six months, ten years after marriage. She had then gone to Pune as she wanted to make her career. According to Prabhawati about two and half years prior to the incident in question the deceased had come to their house along with the accused. She told them that she was going to file application for maintenance and the accused was her advocate. The accused and the deceased stayed with them for one day and left on the next day morning.

18. PW 23 Dr. Mangal Shah has a hospital in Chinchwad, Pune. According to Dr. Shah the deceased was working as a maid in her hospital. Dr. Shah has stated that she was the family doctor of the accused. The accused used to come to her hospital for treatment daily because he had met with an accident. His house was just half a furlong away from her hospital. Rukmini, the mother of the accused also used to visit her hospital for treatment. Dr. Shah has stated that the deceased was a talkative person and was acquainted with Rukminibai. According to Dr. Shah the deceased had asked her whether it would be appropriate to entrust her case to the accused and she had told her that there was no hitch in entrusting her case to the accused.

19. DW 1 Smt. Rukmini Khulpe the mother of the accused has admitted that she used take treatment of PW 23 Dr. Shah. According to her she was acquainted with the deceased at the dispensary of Dr. Shah. She has stated that she had taken the deceased to Wai once or twice. She has admitted that the deceased used to frequently visit her house. This establishes that the deceased was very close to the accused’s family.

20. It is important to note that in his statement recorded under Section 313 of the Code, the accused has admitted that Dr. Shah was his family doctor and his mother's treatment was going on in her hospital. He has admitted that he had met with an accident and therefore, he was taking treatment of Dr. Shah 2/3 months prior to the incident in question. He has admitted that his mother got acquainted with the deceased at the dispensary of Dr. Shah.

21. In this connection it is also necessary to refer to the evidence of PW 5 Pandurang Maruti Khaire. According to Pandurang Khaire he had let out his room at Thergaon to the deceased on rent of Rs.300/- per month. He has stated that the deceased had paid Rs.2000/- as deposit to him. At that time the accused had accompanied her. According to him after sometime the deceased left the house and went to stay in the house owned by one Shedage.

22. PW 6 Vasanti Puranlal lives in Shedge chawl at Thergaon, Pune. She has stated that the deceased used to live in the building situate in front of

her chawl. According to her she knew the deceased. The deceased was a tailor. According to her the accused used to visit the deceased at Shedge chawl. She has stated that 4 to 5 days prior to her death the deceased had told her that she was going to Wai.

23. These two witnesses are independent witnesses. They have no reason to state falsehood on oath. Their evidence establishes that the accused was keen on ensuring that the deceased who had left her husband gets some house to stay. Unless there was intimacy between the two this was not possible.

24. It is also pertinent to note that it is at the instance of the accused that the police went to the room in Shedage chawl where the deceased was staying. Exhibit 53 is the panchnama in that connection. PW 20 Jagannath Shankar Sawant has proved this panchnama. In that house receipts of a jewellery shop were found and the deceased's name was written on them as Pushpanjali Dyaneshwar Khulpe. One sewing machine was also found in the room bearing name of the deceased as Pushpanjali Dnyaneshwar Khulpe. Therefore, the deceased was posing as the wife of the accused. PW 26 API Patil

has also deposed about these facts. In our opinion, therefore, the prosecution has successfully established that the deceased had left her husband and was having illicit relationship with the deceased.

25. Another important circumstance is the connection of the accused with the house in which the incident took place. PW 19 Vijay Tribhune who has lodged the F.I.R. is a relative of the accused. He stays in the house which is in front of the house where the incident took place. In his evidence he has stated that the house where the incident took place is the house of Vithal Khulpe the father of the accused and the dead body was found in that house on 21/8/98. DW 1 Smt. Rukminibai has stated that they own the said house. According to her the accused stays there alone. He looks after the payment of taxes, upkeep and maintenance of that house and he intermittently visit that house from Pune. It is not necessary to dwell on this because in his statement recorded under Section 313 of the Code the accused has said that he is not the owner of that house but the house is his. It appears, therefore, that the house belongs to the family of the accused but as

per the mother of the accused it was kept vacant and was used by the accused intermittently and the accused used to lookafter its maintenance.

26. PW 12 Deepak Kashinath Dhobale is a rickshaw driver. He resides in Sangarali where the house in which the deceased was killed is situate. He has stated that his house is situated in Sangarali and the house of the accused is adjoining his house. He has made a categorical statement that there is nobody in the house of the accused and that the accused alone lives in that house. He has further stated that the incident in question had occurred in the house of the accused about two years back, in the month of August. He had returned home at about 1-30 p.m. and was sitting for taking meals. When he came out of the house after having his meals, he saw smoke coming out from the top of the adjoining house of the accused. He asked whether anybody was present on the first floor. According to him one person replied from the house that he was inside. He explained the existence of smoke as being connected to the menace of mosquitoes. He has frankly said that he cannot state whose voice it was. He has not been cross-examined at all as regards the statement made by him that the house of

the accused adjoins his house and that the accused lives alone in that house. All that is brought on record through the cross-examination is that his house is on the western side of the house of the accused.

27. We are of the opinion that this witness inspires confidence. There is no challenge to the statement made by him that he is the immediate neighbour of the accused. In his statement under Section 313 of the Code the accused has admitted that the house of this witness adjoins his house. This witness has frankly admitted that he could not tell who told him from the house that he was present in the house and the smoke was created to deal with the menace of mosquitoes. If this witness wanted to concoct a case he could have easily said that it was the accused who told him that he was present in the house. The prosecution has rightly not declared him hostile. Since he is the neighbour of the accused it is not possible for him to forget such a gruesome incident. In the circumstances of the case it cannot be argued that this witness could not have deposed about this incident which had taken place in 1998, in the year 2000. The evidence of this witness establishes

that in the house of the accused situated in Sangarali where the incident had taken place, the accused was living alone.

28. Finding of the dead body in the house of the accused in suspicious circumstances is another clinching circumstance against him. PW 1 Uday Ramchandra Dhobale is a pancha to Exhibit 18. Exh.-18 is inquest panchnama. Inquest panchnama indicates that corpse of the deceased was found in the big room on the first floor of the said house. It was naked and in half burnt condition. Spot Panchnama Exh.-20 confirms that from the said house half burnt coal, rock oil can and one match box etc. were taken charge of. The dead body was identified to be that of the deceased by PW 25 Prabhawati, the mother of the deceased and PW 24 Pradeep, the husband of the deceased. Therefore, the fact that the dead body of the deceased was found in the house of the accused can hardly be disputed.

29. Another important circumstance is the seizure of keys of the said house from the accused at the time of his arrest. They are Article 43. P.W. 19 Vijay Tribhune had lodged the F.I.R. According to

him when he was told that smoke was coming out of the house of the accused, he went there. He found that many people had gathered there. He went upstairs from the door which was open. He saw a body burning. He then went and lodged the F.I.R. In the F.I.R. he has stated that one door of the accused's house was open.

30. PW 2 Manohar Patwardhan is the pancha to the spot panchnama Exh.-20. He has stated that there is a wooden door to the accused's house which is facing towards east. According to him the left plank of the door was opened by pushing it and from that they went inside. The spot panchnama Exh.-20 notices that main door of the house is at the distance of 10 feet from north to west and it has two wooden planks and an iron latch. It is further stated in the panchnama that there was a lock on it. It is further stated that to extinguish the fire of the house people had pushed open the wooden door which is on the left side. This evidence establishes that there were two doors to the house of the accused. One was locked and the other was opened by the people by pushing it in order to get in and extinguish the fire.

31. PW 26 Anil Patil, the Investigating Officer has stated that on 22/8/98 he had arrested the accused and drawn arrest panchnama Exh.-48. In the personal search of the accused two keys of Baba Company tied in string were recovered from his person. They are Article 43. Arrest panchnama Exh.-48 records this fact.

32. PW 21 Anil Sawant is the pancha to the demonstration panchnama Exh.-56. He has stated that on 23/8/98 he was called to the said house and in his presence lock of the said house was opened with keys Article 43. Panchnama Exh.-56 records that house No. 487 at Sangarali was opened with keys Article 43. There is no challenge to the evidence of PW 21 Anil Sawant about opening of the lock of the accused's house with keys Article 43. It was argued that PW 2 Manohar Patwardhan who is a pancha to the spot panchnama has recorded in the panchnama and has also stated in the court that 7 keys tied in a string were found lying in the house of the accused. It was, therefore, sought to be argued that since 7 keys were found in the accused's house, the claim of the prosecution that keys of the house were found with the accused and he had locked the house after setting the deceased

on fire is false. There is no substance in this submission.

33. PW 18 Pramod Kamble is a pancha to panchnama to Exh.-48 under which the accused was arrested and search of his person was taken. Pramod Kambale has confirmed that keys Article 43 were seized from the accused. When keys Article 26 were shown to him he stated that they were not the same keys which the police had seized when the accused was arrested. PW 18 Pramod Kamble has not been cross-examined on this aspect. It is not suggested to PW 21 Anil Sawant that the keys of the house were found on the spot and the keys found on the person of the accused are not the keys of the house of the accused. In our opinion, the evidence is clear. There is no need to confuse the keys found lying in the house of the accused with the keys found on the person of the accused. This evidence lends support to the prosecution case that after setting the deceased on fire the accused locked the house and went to Pune. It also falsifies the evidence of DW 1 Rukminibai, the mother of the accused. DW 1 Rukminibai has tried to spin a story that on 20/8/98 the deceased had come to her and told her that she wanted to visit the temple of the Goddess

at Wai. For that purpose she had taken keys of the accused's house from her. DW 1 Rukminibai obviously wanted the court to believe that the deceased had gone to the accused's house alone. Her evidence is falsified by the evidence which we have referred to in the preceding paragraphs.

34. The next important circumstance is the fact that the medical evidence indicates that the burn injuries were post-mortem. That means that the deceased was first done to death and then set on fire.

35. PW 15 Dr. Baliram Shinde had done post-mortem on the deceased on 22/3/98 at Rural Hospital, Wai. He found 96% superficial mostly deep burns on the deceased. In his opinion cause of death was asphyxia due to closing of mouth and nose. He inter alia stated that the brain was congested. The Larynx, Trachea and Bronchi were also congested According to him right lung was also congested and on cut section reddish fluid came out.

36. Mr. Borulkar, learned Public Prosecutor pointed out that there were no soot particles in the respiratory tract of the deceased and absence

of soot particles militates against any hypothesis that the deceased was set on fire while she was alive. He drew our attention to a passage at page 998 from Lyon’s Medical Jurisprudence and Toxicology, 11th Edition 2005, revised by Prof. T. D. Digra and lt. Col. Abhijit Rudra. The passage reads as under:

> "Soot particles are produced as a result of incomplete combustion. The "carbon particles" can be seen in the upper respiratory tract mixed with mucous. Their presence signifies that at least one breath had been taken before the person died".

37. Mr. Borulkar is right in submitting that the burns suffered by the deceased were post-mortem. Dr. Shinde has stated that to determine whether the burns were antemortem he had sent two skin flaps for histopathological examination. Report of histopathological examination which is at Exh. 42 states "Impression". On histology findings suggestive of antemortem burns are not present. On the basis of this report Dr. Shinde opined that burn injuries were not antemortem injuries.

Therefore, it is clear that this is not a case of suicide. The deceased was gagged to death and thereafter set on fire obviously with a view to destroying evidence.

38. Another important circumstance is the extra judicial confession made by the accused to PW 14 Rekha the social worker. She has stated that she was working as a social worker at Wai for 35 years. She is a member of Mahila Vigilence Committee and was working in that capacity for 14 years. According to her when she came to know that one woman was burnt alive she went to Sangarali at about 11.00 a.m. or 11-30 a.m. She saw the accused. She asked him about the incident. He told her that he had love affair with his fiancee. They had gone to Mandhardevi and had returned. The deceased was demanding gold from him on that day. She had demanded gold ring. He had told her that he had no money and that he would purchase it after going to Pune. Because of this there was altercation between them. The deceased had abused him. He was also annoyed. He then pushed her, gagged her mouth by keeping her folded hands on it and due to suffocation she died. According to Rekha, she asked as to why he had burnt her. The

accused told her that he had collected the wooden logs and burnt them. He was there upto 4 p.m. and then he left for Pune. He came from Pune, at 10 a.m. to 10-30 a.m.

39. The evidence of Rekha has been attacked on several grounds. It was argued that Rekha was a social worker. She was not known to the accused. The accused is a lawyer and, therefore, he would never make any extra judicial confession to her. It was submitted that extra judicial confession has to be voluntary. In this case it was Rekha who asked the questions to the accused. Therefore, the accused was forced to make a confession. The extra judicial confession is, therefore, not a voluntary confession. Rekha herself has admitted that she was not acquainted with the accused and there was no talk between her and the accused prior to the date of incident. It is, therefore, inconceivable that the accused would make a confession before such a stranger. It was further argued that Rekha has stated that the police were present there. If an extra judicial confession is made before the police it cannot be relied upon. It was argued that extra judicial confession is a weak type of evidence and unless corroborated it should not be

believed and inasmuch as there is no corroboration to the alleged extra judicial confession of the accused, it should not be believed. According to Mr. Kocharekar, the police have concocted this piece of evidence and hence no reliance should be placed on it.

40. Before we discuss the evidence of PW 14 Rekha it is necessary to see what the Supreme Court has said about the evidenciary value of extra judicial confession. In **Piara Singh's case (supra)** the Supreme Court was considering extra judicial confession made by the accused to the surpanch of the village. The Sessions Judge had held that extra judicial confession is a very weak type of evidence and hence no reliance can be placed on it. The Supreme Court held that the Sessions Judge had committed a clear error of law because the law does not require that evidence of an extra judicial confession should in all cases be corroborated. The Supreme Court held that the extra judicial confession was proved by independent witness who was a responsible officer and who bore no animus against the accused and, therefore, there was no justification for the Sessions Judge to disbelieve the evidence of the surpanch. Though the surpanch

was a man in authority the extra judicial confession made to him was not discarded on a spacious plea that it may not be voluntary because it was given to a person in authority and it was possible that some force may have been exerted on the accused.

41. In **M. K. Anthony's case (supra)** the Supreme Court was again dealing with extra judicial confession. The Supreme Court observed as under:

> "There is neither any rule of law nor of prudence that evidence furnished by extra-judicial confession cannot be relied upon unless corroborated by some other credible evidence. The Courts have considered the evidence of extra-judicial confession a weak piece of evidence. If the evidence about extra-judicial confession comes from the mouth of witness/witnesses who appear to be unbiased, not even remotely inimical to the accused, and in respect of whom nothing is brought out which may tend to indicate that he may have a motive for attributing an

> untruthful statement to the accused; the words spoken to by the witness are clearly unambiguous and unmistakably convey that the accused is the perpetrator of the crime and nothing is omitted by the witness which may militate against it, then after subjecting the evidence of the witness to a rigorous test on the touchstone of credibility, if it passes the test, the extra-judicial confession can be accepted and can be the basis of a conviction. In such a situation to go in search of corroboration itself tends to cast a shadow of doubt over the evidence. If the evidence of extra-judicial confession is reliable, trustworthy and beyond reproach the same can be relied upon and a conviction can be founded thereon."

Therefore, if a witness who is unbiased and not inimical to the accused deposes about extra judicial confession having been made to him, his evidence can be accepted even if there is no

corroboration. The court must be, however, satisfied that the evidence of extra judicial confession is reliable, trustworthy and beyond reproach.

42. In **Vinayak Shivajirao Pol's case (supra)** the accused who was the sepoy in army had approached some of the superior officers and confessed before them that he had killed his wife. The confession was given by him in writing. The writing was attested by four military officers. The Supreme Court held that the confession statement was voluntary. It would, therefore, depend on facts and circumstances of a case. If attendant circumstances inspire confidence, reliance can be placed on an extra judicial confession even though it is made to a stranger or a person in authority.

43. PW 14, Rekha appears to be a very respectable citizen of the society. She was working as a social worker for 35 years and she was attached to Mahila Vigilence Committee for 14 years. In the absence of any material on record to indicate that she was biased against the accused or that she was inimical towards him or that she was set up by the police or any other person to act against the

interest of the accused it would be unfair to stamp her as a got up witness. Though in the English version of the evidence of this witness it is stated that she interrogated the accused, that translation is wrong. It is a very misleading translation. In the Marathi version the word "Vicharpoos" isused. The word Vicharpoos could be properly translated as "inquired or asked". Therefore, it would be wrong to say that the accused was interrogated by Rekha. It was argued that Rekha has admitted that prior to the day of incident she had never talked to the accused. It may be that Rekha was a stranger to the accused but that does not in any way diminish the value of her evidence. There is nothing uncommon in a given case in the accused confessing to a crime to a stranger in a remorseful mood. An extra judicial confession made to Sarpanch or to the superior military officer has also been accepted by the Supreme Court in aforementioned cases as a truthful piece of evidence. In this case there is nothing to indicate that Rekha was out to falsely implicate the accused or she coerced the accused to confess by misusing her position. Extra Judicial confession made to her appears to us to be voluntary and truthful.

44. It is true that in the cross-examination she has stated that many people had gathered and police were also present there. However, she has nowhere stated that when the accused made extra judicial confession to her, the police were present near them. It cannot, therefore, be said that the extra judicial confession was made in the presence of the police. There is no evidence to support that she was acting as an agent of the police.

45. We have no reason to disbelieve Rekha, particularly when there is other corroborative evidence on record like injuries sustained by the accused on his face which according to the doctor could be caused by nails and the fact that nail clippings of the deceased contained disintegrated blood.

46. PW 16 Dr. Subhash Tanaji Kadam has examined the accused on 23/8/98 at the Rural Hospital, Wai. Dr. Kadam had found following injuries on the accused:

1. Abrasion over left cheek 5 cm in front of left angle of mandible oblique 1 1/2 cm x 1/4 cm in size

scab present which is redish brown in colour, movements Present no fracture clinically.

2. Abrasion over right antenolateral aspect of neck 2 cm below the right angle of mandible 1/2 cm x 1/4 cm in size oblique, scab present which is redish brown in colour movements present no fracture clinically.

Dr. Kadam has stated that age of injuries No. 1 and 2 is within two to three days and the injuries were simple injuries. He has stated that he had issued medical certificate Exh. 44. He has further stated that these injuries are possible by nails. Dr. Kadam has been cross-examined but he has stood firm in the cross-examination. Exhibit 44 states that Dr. Kadam had examined the accused at 8 p.m. on 23/8/98. The doctor has opined that the injuries were within two to three days. This supports the prosecution case. The accused has not offered any explanation for these injuries. Therefore, the only logical and legal inference which can be drawn from this is that when the accused tried to gag the deceased she offered resistance and in that the accused suffered the said injuries by the nails of the deceased.

47. Corroboration to this is found in PW 18 Pramod Kamble's evidence. PW 18 Pramod Kamble is a pancha to arrest panchnama Exh. 48 under which the accused was arrested. He has stated that he noticed that the accused had injuries below both the ears which appeared to be caused by nails. In panchnama Exh. 48 it is stated that the accused had scratch wounds caused by nails below the right and left ears and on the cheeks. PW 21 Dy. SP Patil has also stated that when he arrested the accused he found abrasions behind both the ears of the accused.

48. Further corroboration to this is found in the chemical analyser's report. Nail clippings of the deceased were sent to the chemical analyser. The chemical analyser's report Exhibit-71 states that "the nail clippings were stained with blood and appear to be decomposed species". Under the caption origin are the words "disintegrated" and under the caption grouping are the words "unsuitable". The fact that nail clippings of the deceased were stained with blood is most significant.

49. Once the prosecution is successful in establishing that there was illicit relationship between the accused and the deceased and that the house where the incident took place belonged to the accused and the accused was staying there alone and the deceased was found dead in that house in suspicious circumstances, it is for the accused to offer explanation for it. The medical evidence as we have already noted clearly establishes that the deceased did not commit suicide by setting herself on fire but she was gagged to death and then set on fire. To disassociate himself from the prosecution case that he is the perpetrator of the crime, the accused has set up the plea of alibi by examining his mother DW 1 Rukminibai to prove it.

50. We find that the accused has failed to probabalise alibi. DW 1 Rukminibai has tried to save the accused by saying that he was at Pune from 11/8/98 to 22/8/98. However, she has not produced any documentary evidence to establish that the accused was in Pune. Being the mother of the accused she is an interested witness and is bound to come out with such a story. It was necessary for the accused to examine an independent witness to prove alibi. It is apparent from the tenor of

the evidence of Rukminibai that she has made an effort to protect her son. We have already observed that her case that the deceased took keys of the house from her and went there alone is falsified. Failure on the part of the defence to examine any independent witness or produce any clinching documentary evidence has adversely affected its case and has fortified the prosecution case. False defence of the accused would become an additional link in the chain of circumstances pointing to the guilt of the accused.

51. In this connection, we may usefully refer to the judgment of the Supreme Court in **State of T.N. v. P. Muniappan (supra**). In that case the accused was the only occupant of the house in which his wife met with an unnatural end. His varied explanations were found totally unbelievable. His unbelievable explanation was treated as a link in the chain of circumstances against the accused.

52. It is also important to note that when all the incriminating circumstances were put to the accused in his statement recorded under Section 313 of the Code the accused has denied almost all of them as being false. He has gone to the extent of denying

the finding of dead body in his house and drawing of inquest panchnama. When he was asked whether PW 16 Dr. Subhash examined him on 23/8/98 and found injuries on his person and opined that the age of injuries was within 2/3 days the accused stated that this evidence is false. When the prosecution has laid the evidence of a doctor who is an independent witness to depose about the scratch injuries found on the accused, the accused ought to have given explanation for them. It was necessary for him to explain the inculpating circumstances. His failure to do so would also provide a missing link in completing the chain.

53. In this connection, we may usefully refer to the judgment of the Supreme Court in **State of Maharashtra v. Suresh, 2000 (1) SCC 471**, where it is held that false answer offered by the accused when his attention was drawn to any inculpating circumstance would render such circumstance as capable of inculpating him and in such a situation a false answer can also be counted as providing "a missing link" in completing the chain. Similar view has been taken by the Supreme Court in **Mani Kumar Thapa's case (supra)**.

54. In our opinion, the prosecution has also successfully established the motive. According to PW 14 Rekha, the accused told her that the deceased had demanded gold from him. He had told her that he had no money and that he would purchase gold after going to Pune. Because of this there was quarrel between the two. The deceased abused him. He was annoyed and hence he killed her. This could be the motive to commit the murder. But apart from this there is yet another clinching circumstance which in our opinion could have provided the motive. According to PW 15 Dr. Shinde, who did the post-mortem the deceased was pregnant and the foetus was 20/24 weeks old. The prosecution has examined PW 7 Dr. Sanjay Gavhane, who is a medical practitioner from Thergaon. When the photograph of the deceased was shown to him he stated that the deceased had come to him along with the accused for medical check up. They had come for advice about abortion. According to Dr. Gavhane, he told them that as the child was healthy, it should not be aborted. He advised urine test and sonography. They again came after sonography. As the child was healthy they decided to continue with the pregnancy. He has stated that he had issued certificate Exh.27 dated 4/9/98 as requested by the

police that the deceased was under his treatment for antenatal checkup in June, 1998.

55. It is true that Dr. Gavhane has admitted that there are no case papers of the deceased. He has frankly stated that because the police requested him he issued certificate Exh. 27. But his evidence cannot be discarded on that ground. Thergaon is a small village. It is not unlikely that a doctor would remember a patient after two years. Dr. Gavhane is an independent witness. It would be unfair to hold that he is not a truthful witness in the absence of any evidence which can be said to cast a shadow of doubt on his credibility.

56. But even assuming that Dr. Gavhane's evidence deserves to be kept out of consideration, still there is the evidence of Dr. Shinde and the post-mortem notes which establish that the deceased was pregnant. It appears that the accused wanted to get rid of the deceased because of the pregnancy. In our opinion this is not a case of absence of motive.

57. We must note that though the prosecution has tried to examine number of witnesses to establish

inculpating circumstances against the accused, we are not impressed by the evidence of all the witnesses. We may briefly touch that evidence lest it be said that we have ignored it and not examined what is the effect of such evidence on the prosecution case. In order to establish that the accused and the deceased were last seen together the prosecution has examined PW 4 Mohan Rajapure, and PW 11 Sanjay Umbarkar. They are jeep drivers. PW 23 Bhalchandra Dudhane owns a hotel which is situated near ST stand at Wai. These three witnesses have stated that they had seen the accused and the deceased together about 2 years back. We find it difficult to place implicit reliance on these witnesses. It is difficult to believe that after two years these witnesses could have identified the accused and the deceased. Significantly identification parade was also not held.

58. The prosecution has examined PW 13 Maruti Pawar who lives in Sangarali at Wai. His house is in front of the house of the accused. In his statement recorded under Section 313 of the Code the accused has admitted that PW 13 Maruti Pawar stays in Sangarali. It appears that statement of

this witness was recorded under Section 164 of the Code by the Magistrate. However, he has not supported the prosecution. Though learned Sessions Judge has held that the prosecution can draw support from his evidence, we are not inclined to concur with him. Similarly, we are not impressed by the evidence adduced by the prosecution regarding telephone calls made by the accused from STD booth at Wai.

59. The prosecution has then examined two photographers. PW 8 Ranjeet Chavan has stated that he had taken photographs of the house of the deceased. Another photographer is PW 9 Kumar Khotlande. He had taken photographs of the house of the accused. We find from the evidence of these two witnesses that the learned Sessions Judge has not exhibited these photographs. The evidence of these witnesses would, therefore, be of no use to the prosecution. The question is whether, if evidence of these witnesses is kept out of consideration would it adversely affect the prosecution case. In our opinion, even if this evidence is obliterated it will not damage the prosecution case.

60. Principles underlying appreciation of circumstantial evidence are very clear. It is well settled that circumstances from which conclusion of guilt has to be drawn should be fully proved. They should be conclusive but it is not necessary that every one of the proved facts must in itself be decisive of the complicity of the accused. While deciding the question of sufficiency what the court has to consider is the cumulative effect of all the proved facts. It is the cumulative result of all the proved circumstances which must unerringly point to the guilt of the accused and not one circumstance by itself. The chain of circumstantial evidence must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.

61. In **Pohalya Motya Valvi v State of Maharashtra, AIR 1979 SC 1949** while dealing with circumstantial evidence the Supreme Court clarified that all the proved circumstances must provide a complete chain no link of which must be missing and they must unequivocally point to the guilt of the accused and

exclude any hypothesis consistent with his innocence.

62. In **Gade Laxman Mangaraju alias Ramesh V. State of A.P. (2001) 6 S C C 205**, the prosecution case rested on circumstantial evidence. Nine circumstances were relied upon. Out of them one was evidence based on sniffer dogs. The Supreme Court was of the view that there are inherent frailties in that evidence and hence it cannot be relied upon. But the Supreme Court clarified that exclusion of that circumstance would not affect the strength or sturdiness of the chain found through other circumstances which had been established by the prosecution.

63. In the light of the above principles, we feel that if some circumstances are held not proved, the proved circumstances cannot be thrown overboard, if they form a chain pointing to the guilt of the accused. The prosecution has successfully proved the illicit relationship between the accused and the deceased, the finding of the dead body of the deceased in suspicious circumstances in the house of the accused, finding of keys of the house with the accused, extra judicial confession made by the

accused, scratch injuries suffered by the accused and blood found in the nail clippings of the deceased and the motive. These proved circumstances together form a strong chain pointing directly to the guilt of the accused. Cumulative effect of these circumstances far outweigh the effect of a part of the prosecution evidence not being accepted by the court because that part, in our opinion, is hardly of any significance considering the clinching nature of proved circumstances which form a chain which unerringly points to the guilt of the accused. In addition to this missing link is provided by false explanation of the accused.

64. In the ultimate analysis, therefore, we are of the firm opinion that it is the appellant/accused who gagged deceased Pushpanjali to death and then set her on fire to destroy the evidence. He has rightly been convicted. There is no merit in the appeal.

65. The appeal is dismissed.

(SMT. RANJANA DESAI,J.)

(D. G. KARNIK, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 685 OF 2000

SHRI DNYANESHWAR @ DEEPAK .. APPELLANT

Versus

STATE OF MAHARASHTRA .. RESPONDENT

Mr. M. K. Kocharekar for appellant

Mr. S.R. Borulkar, PP with F.R. Shaikh, Addl.PP for State.

CORAM:-SMT. RANJANA DESAI &

D. G. KARNIK, JJ.

DATED:- 5/5/2006

JUDGMENT:-(Smt. Ranjana Desai, J.)

. For the reasons separately recorded in the judgment this court has dismissed the appeal.

(SMT. RANJANA DESAI,J.)

(D. G. KARNIK, J.)